

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC

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9 Debtor.

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11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

14

15 Friday, February 9, 2024

16 3:00 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: UNKNOWN

1 HEARING re Status Conference re: Confirmation Hearing

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1 P R O C E E D I N G S

2 THE COURT: This is Judge Sean Lane in the United
3 States Bankruptcy Court for the Southern District Of New
4 York, and we're here this afternoon for a court-scheduled
5 conference in the Genesis case. We'll start with
6 appearances. Let me find out who's here from the debtor.

7 MR. O'NEAL: Your Honor, Sean O'Neal, Cleary
8 Gottlieb, on behalf of the debtors. I'm with my colleagues
9 Jane VanLare, Tom Kessler and Andrew Weaver.

10 THE COURT: Who's here for the committee?

11 MR. SHORE: Good afternoon, Your Honor. Chris
12 Shore, from White & Case. I'm here along with my partners
13 Colin West and Phil Abelson.

14 THE COURT: On behalf of the ad hoc group?

15 MR. ROSEN: Your Honor, Brian Rosen, Proskauer
16 Rose. I believe I'm going to be joined in just a minute by
17 my colleague Jordan Sazant.

18 THE COURT: On behalf of DCG?

19 MR. SAFERSTEIN: Good afternoon, Your Honor.
20 Jeffrey Saferstein, from Weil Gotshal & Manges. I'm here
21 with my partners Jonathan Polkes, Caroline Zalka, Jessica
22 Liou and Furqaan Siddiqui.

23 THE COURT: On behalf of CCAHG?

24 MS. GRIFFITH: Good afternoon, Your Honor. Greer
25 Griffith, from McDermott Will & Emery.

1 THE COURT: Anyone else who wants to make an
2 appearance who's not yet done so.

3 MR. DRAGHI: Good afternoon, Your Honor. Tom
4 Draghi, from Westerman Ball. How have you been, sir?
5 Counsel to the New York attorney general's office.

6 THE COURT: All right. Good afternoon. Anyone
7 else?

8 MR. MEDINA: Good afternoon, Your Honor. Eric
9 Medina, for BAO Family Holdings.

10 THE COURT: Good afternoon. On behalf of Gemini?
11 I don't believe I've had Gemini's appearance.

12 MR. FRELINGHUYSEN: Good afternoon, Your Honor.
13 Anson Frelinghuysen, Hughes Hubbard and Reid, on behalf of
14 Gemini Trust Company, LLC.

15 THE COURT: Anyone else?

16 MS. MILLIGAN: Good afternoon, Your Honor. Layla
17 Milligan and my colleague Sean Flynn, with the Texas
18 attorney general's office, appearing on behalf of the Texas
19 State Securities Board and Department of Banking.

20 THE COURT: Anyone else?

21 MR. UPTEGROVE: Good afternoon, Your Honor.
22 William Uptegrove, on behalf of the United States Securities
23 and Exchange Commission.

24 THE COURT: Anyone else? All right. So I
25 received a letter dated February 9th dealing with the amount

1 of things that have been filed on proposed short notice in
2 this case to coincide with the confirmation hearing on the
3 14th and let me put a little bit of additional background
4 around this.

5 Chambers had gotten a call, a heads-up there might
6 be a pleading filed in connection with the AG's case, and
7 obviously they couldn't make that public because things
8 aren't resolved until they're resolved. So we took it in
9 the spirit in which was offered, just to keep chambers in
10 the loop for scheduling purposes.

11 My understanding from that call was that the
12 notion was that, given the timing, that the confirmation
13 hearing would likely be pushed off. We then received the
14 motion as well as the request to shorten time to keep
15 everything on for the 14th, and in light of the prior
16 communication, I had chambers reach out to essentially
17 inquire, saying that seemed to be at odds with what we had
18 understood, and also that it just seemed to be at odds with
19 good sense, frankly, because without seeing anything or
20 reading anything other than sort of an introductory
21 paragraph, it was pretty clear that there would be parties
22 in this case who had a view about, or may have a view about
23 the AG settlement. There were conversations that took place
24 this morning, and then, frankly, nothing happened.

25 So as somebody who in my prior life spent a lot of

1 time thinking about process, I understand we're going to get
2 to the substantive issues here. But the last thing that
3 anyone should have to grapple with is due process issues. I
4 understand there's a need in cases to move quickly. We do
5 that, I think, fairly nimbly in this court. But the notion
6 that we need to move everything forward at breakneck speed,
7 to continue to move things forward at breakneck speed, in
8 instances where the amount of time involved is exceedingly
9 short, it just doesn't make good sense. It injects
10 additional problems into the process. And regardless of who
11 wins or loses, then you have potential appeal points dealing
12 with due process issues. That's very Machiavellian. But
13 the main point is that it's just not the way to do business.

14 So we're not having this motion heard on the 14th.
15 It's not happening. It shouldn't happen. I don't know
16 who's right, who's wrong, objections, any of that. I don't
17 know anything about the substance. But it just doesn't make
18 good procedural sense. I understand that people would like
19 things in the case to move forward quickly, but we've been
20 doing this case for a while now, and I'm unaware of anything
21 that justifies the speed involved, other than we have a
22 hearing date. Well, now you don't.

23 So with that, I'm no longer asking anybody their
24 opinion about what should happen. I'm going to tell people
25 what's going to happen, and I'll be a little less subtle in

1 the future. So the 14th is out. I know the normal notice
2 period for these sorts of settlements is 21 days. It was
3 filed on the 8th, if I remember correctly. I frankly don't
4 know that we need that amount of notice involved. I know
5 that's what the rules normally provide for, but I do think
6 we have highly motivated parties here.

7 So my suggestion, and also every time I do one of
8 these things and I clear a calendar, I put people on other
9 days, and then I move them again. And there is no pecking
10 order here in terms of whose rights are more or less
11 important. In bankruptcy, everybody's, as a customer, is
12 important. So I have days that are open on the 23rd and the
13 26th, which is a Friday and a Monday. And so that's where
14 I'm leaning towards and working backwards towards there.
15 And to the extent we couldn't get it done in those two days,
16 I'm sure I could find time to finish up on the 27th or 28th,
17 given what I'm hearing from the parties about the ballpark
18 figures of how long things will take.

19 So that's where I am, and people can try to
20 persuade me otherwise. And obviously, if there's some
21 legitimate reason that that doesn't work, I'm happy to hear
22 it. But I also did spend enough time this morning spinning
23 wheels trying to sort of avoid having to get you all
24 together for a conference on this, seeing as how it's as
25 inevitable as looking and seeing the light at the other end

1 of the tunnel. But it turned out to be another train. So
2 that's where I am.

3 So I'm happy to hear from Mr. O'Neal to start, and
4 then I'll hear from DCG and I'll hear from anybody else who
5 wishes to be heard.

6 MR. O'NEAL: Thank you, Your Honor. Sean O'Neal.
7 I'm hoping you can hear me well. It's been a while since
8 I've done --

9 THE COURT: I can hear you just fine.

10 MR. O'NEAL: -- a court call from home. So I
11 apologize. We agree with you that the attorney general
12 stipulation and confirmation should be heard at the same
13 time. And I think we had received that word from chambers.
14 And we've been in the process of trying to identify dates
15 that lawyers and witnesses would be available and so
16 apologize for the confusion and miscommunication there. But
17 that was certainly something we were trying to do.
18 Obviously, the creditors are sensitive to any delay and we
19 were trying to see if we could continue to achieve the
20 deadline. And we've heard you loud and clear. I think the
21 23rd and the 26th are actually dates that we had circled
22 around as dates that could work. We may need another day,
23 though. We had three days before and things haven't --

24 THE COURT: Yeah. No, I figured --

25 MR. O'NEAL: Yeah.

1 THE COURT: -- if we work with those days, then I
2 can try to clear the 27th or the 28th off --

3 MR. O'NEAL: Yeah.

4 THE COURT: -- after 11:00 and use essentially the
5 rest of one of those days.

6 MR. O'NEAL: Okay.

7 THE COURT: My inclination would be to use the
8 27th, and then that way we'd have the 28th in the afternoon
9 if we needed.

10 MR. O'NEAL: And Your Honor, if I could, I mean, I
11 think it may be less problematic for some of the schedules
12 of the lawyers involved. We will not have everybody on
13 board for the 23rd, two of our key senior lawyers who are
14 managing the process. And then I think we also have a
15 problem with a witness, one of our witnesses on the 23rd.
16 So if we could, Your Honor, if we could suggest the 26th,
17 27th and then the 28th, I think that would work out better
18 because then our two senior lawyers who have been --

19 THE COURT: Well, every time I use the 27th and
20 the 28th, I have to move things.

21 MR. O'NEAL: Yeah.

22 THE COURT: And I've already moved things.

23 MR. O'NEAL: Understood.

24 THE COURT: And so that's the problem. So I'm
25 amenable to sequencing things. It's a bench proceeding,

1 after all. So we don't have to worry about shuttling a jury
2 in and out or any of those logistical things. So if people
3 want to take things out of order, as long as people
4 understand what's happening on what day, so that people can
5 appropriately prepare. But that seems to be a logistical
6 problem that can be solved. So that would be my thought.
7 If somebody is the person for a particular witness and isn't
8 around the 23rd, we could do that witness on the 26th, but
9 we could hopefully make some hay on the 23rd. So if we
10 wanted to do openings, some witnesses, and if there are
11 things that we can't do on the 23rd or that you'd ask not to
12 do, I'm sure we can work around that.

13 MR. O'NEAL: Understood, Your Honor. And I think
14 we could work with that schedule. I'm looking to my
15 colleague, Jane VanLare, who seems to be nodding her head,
16 but I'll defer to her.

17 MS. VANLARE: Thank you. I think we can
18 (indiscernible) --

19 THE COURT: All right, and the idea would be if
20 there's a particular order for things, that you circulate it
21 among parties so everybody else knows what they need to be
22 ready for and what they don't.

23 MR. O'NEAL: Yes.

24 THE COURT: But frankly, that's no different than
25 any other trial in terms of understanding who's up.

1 MR. O'NEAL: And Your Honor, just to avoid any
2 kind of confusion or otherwise, is there any guidance that
3 Your Honor would want to give us? So, for example, we could
4 try to put the New York attorney general stipulation on the
5 23rd. That might work out better in some ways, and then we
6 would do witness --

7 THE COURT: Well, this is where --

8 MR. O'NEAL: -- or we could all combine it in a
9 single kind of bowl of soup, as they say, whatever your
10 preference is.

11 THE COURT: So this is probably where me sticking
12 my nose in is not a good idea because it's really driven by
13 your schedules. My thought is I want to give you court time
14 and you'll figure out how to appropriately use it.

15 MR. O'NEAL: Understood.

16 THE COURT: And so what I might do after we finish
17 talking is for me to get off the phone and ask you all to
18 stay on to try to maybe work out some of those logistics.
19 But let me do this. Let me first circle the room about the
20 general dates, proposals first, and then we can start
21 talking about the specifics. So let me hear from DGC --
22 DCG. Excuse me.

23 MR. SAFERSTEIN: Good afternoon, Your Honor.
24 Again, Jeffrey Saferstein, from Weil Gotshal & Manges. Your
25 Honor, if you're proposing to start a hearing for the New

1 York attorney general motion on the 23rd, we don't think
2 that that's enough time. The motion seeks to --
3 essentially, the settlement seeks to take all of the excess
4 value of the estate and turn it over to the New York
5 attorney general's office. We are going to need discovery.
6 We're going to want to know what went into this settlement.
7 We're going to want to depose the special committee members.
8 This is not a settlement of \$20 million or 50. This could
9 be -- if we're correct, in connection with our objections to
10 the plan, this could be a billion-dollar settlement or more.
11 And so to do it on -- I'm just counting days now -- 14 days
12 from now to start is just not enough time. And I think with
13 respect to due process, we're going to need to have
14 discovery in connection with this.

15 THE COURT: All right. Let me hear from the
16 committee.

17 MR. SHORE: Good afternoon, Your Honor. I'm
18 frantically getting texts in from my team about the 23rd may
19 be a problem. We'll figure out something. We need to get
20 lawyers and the witness scheduled in that time, and we can
21 hang on the phone and answer. But I do want to respond
22 because, not just to what Mr. Saferstein said, but what he
23 said in his letter regarding breaches of fiduciary duty and
24 the like. I'd like to explain why the committee felt
25 comfortable going forward with the confirmation hearing

1 without the AG settlement. For all the talk of Section
2 502(b) of the code in the papers, everyone seems to be
3 forgetting about 502(a). Each of the settlements that is
4 before the court that is outlined in Mr. Saferstein's letter
5 are the subject of proofs of claim filed against the
6 debtors.

7 So, for example, the New York AG filed a proof of
8 claim against each of the debtors seeking that amount, the
9 amount necessary to pay -- to assure that creditors with
10 claims against the debtors get their full contractual
11 rights, what Mr. Saferstein calls the surplus. Nobody has
12 objected to those claims, not the least of which DCG has
13 not. In effect, I mentioned that to Mr. Saferstein a month
14 ago, that if they were going to take the --

15 THE COURT: No, I -- well, let me -- let me just -
16 - let me just cut this off, because we might end up segueing
17 to a much longer discussion that isn't the purpose for
18 today. I'm not buying the notion that this has all come out
19 of the sky and it's a new, entirely new issue and that
20 nobody has any notice of the fact that there's a claim by
21 the New York attorney general's office and that it's on the
22 record and that, as the claimant, they are currently without
23 objection and therefore share in the recovery as an
24 unsecured creditor. What my concern is that the settlement
25 has been much discussed in the case, and therefore it's a

1 significant event, and without needing to put too fine a
2 point on it, people should have time to respond to it. But
3 I don't sort of understand this to be something -- the
4 settlement may be something that's new, but the attorney
5 general's claim is not. So I get that. I get that.

6 So my problem is the sheer optics of five or six
7 days is just terrible. And so it's just -- that's just not
8 appropriate. And people need to have a chance to address
9 it. And there's discovery. You know, Chrysler was done in
10 30 days. So people can act quickly, but five days is nuts
11 and I just don't think is appropriate, and it sends the
12 wrong message to everybody.

13 Also, frankly, I've got to process this and get
14 information, get up to speed. You all know a lot more about
15 this than I do, and if I don't have time to do that, you may
16 get all your evidence in and all your argument in, and I'll
17 be spending the time afterwards to try to sort through it.
18 So there's a lot of reasons for pumping the brakes. So
19 anything else from the committee?

20 MR. SHORE: Just to be clear, Your Honor, you want
21 to move the confirmation hearing. We have no problem moving
22 the confirmation hearing. What I'm trying to say is there
23 should be no slippage because of the hearing of the New York
24 attorney general settlement because of DCG's purported need
25 to take months of discovery. This can be done quickly. I

1 agree with you, and we should just get it done.

2 THE COURT: All right. Let me hear from the ad
3 hoc group.

4 MR. ROSEN: Thank you very much, Your Honor.
5 Brian Rosen, Proskauer Rosen. I apologize for the dress
6 code for this afternoon. It was a little quick.

7 THE COURT: Well, it's a sad situation when even
8 Friday afternoon isn't safe. But we do the best we can.
9 It's fine.

10 MR. ROSEN: Thank you, Your Honor. On behalf of
11 the ad hoc committee, we obviously are very supportive of
12 where we're going here. We have no problem if the court
13 wants to move the confirmation hearing and the corresponding
14 hearings. Like Mr. Shore, we just don't believe that
15 significant discovery needs to be undertaken here. If Mr.
16 Saferstein wants to take the deposition or some additional
17 discovery of the special committee, he's certainly able to
18 do that. And I'm sure that the special committee will be
19 very expeditious in their response and their availability of
20 the appropriate person. I can't imagine any more discovery
21 that would be necessary. So we're fine, Your Honor, going
22 forward on the 23rd, if that makes sense for other people,
23 and we'll certainly be available the 26th, 27th and 28th.

24 THE COURT: All right. With that, let me hear
25 from CCAHG.

1 MS. GRIFFITH: Good afternoon, Your Honor. We
2 have no objections to moving the confirmation hearing as you
3 propose.

4 THE COURT: All right. Obviously we're spending a
5 lot of time talking about the New York attorney general's
6 office. So I want to make sure to hear from them as well.

7 MR. DRAGHI: Good afternoon, Your Honor. Again,
8 Tom Draghi, for the record. The New York attorney general's
9 office is also on board for the February 23, 26, 27 and 28th
10 dates.

11 THE COURT: All right. All right. Anyone else
12 who wishes to chime in?

13 MR. SAFERSTEIN: Your Honor, it's Jeff Saferstein
14 again, for DCG. I just want to make one thing clear. We're
15 not opposed to proceeding with the confirmation hearing on
16 Wednesday. It's the New York attorney general's motion
17 which we have an issue with. So just to be clear on that
18 point, we're not requesting a delay --

19 THE COURT: Well, here's the thing. I don't know
20 how one impacts the other, and the original sentiment that
21 was expressed to chambers is to carry them together. And in
22 the interest of being conservative, I can see doing that. I
23 mean, if we're going to put on -- I don't know if anyone
24 needs to put on evidence as to the settlement. Certainly
25 there's evidence as to confirmation. It would make no

1 sense, frankly, to have those people come back twice. And
2 so my thought is there's some efficiency to it. And I would
3 hate to run into a roadblock or simply end up, which is even
4 more challenging, having one bleed into the other in the
5 middle of the confirmation hearing. And then we end up
6 having a lengthy discussion about the settlement that isn't
7 even fully baked because nobody's had a chance to respond to
8 it yet. So that just seems to inject a lot of potential
9 problems. And so I'm not a fan of trying to just close my
10 eyes and hope it goes okay. That doesn't seem like a good
11 plan.

12 So my thought would be to have them together and
13 that way we don't have to worry about one bleeding into the
14 other. We're having one hearing and we'll deal with it. On
15 that score, I didn't understand the other motions, the SEC
16 motion and the trust asset sales motion to be the thing, Mr.
17 Saferstein, that you were concerned about. The rest of your
18 letter really focuses on the New York AG motion and that
19 settlement, which makes sense to me. So my thought is that,
20 unless somebody has a problem, that we could get some work
21 done on the 14th in dealing with those other matters, which
22 would allow us to move forward more expeditiously on
23 whatever dates we choose for the confirmation hearing and
24 the hearing on the AG's motion.

25 MR. SAFERSTEIN: Your Honor, again, Jeffrey

1 Saferstein, for DCG. In 23 minutes, we'll be filing
2 objections to both the -- to the other two motions. We do
3 think that they're premature. We think that they should
4 follow confirmation of the amended plan. We think that
5 they're all wrapped together. Certainly the SEC motion,
6 again, it provides for a claim after creditors are paid.
7 And so depending on how Your Honor comes out on the merits
8 of our objection on the plan, we think that it has a real
9 impact on DCG, or it could have a real impact on DCG.

10 So again, we think that in our objection that
11 you'll see shortly, we're asking the court to put those off
12 until after confirmation. Again, we could do it, I guess,
13 the same day, but we think that there's no reason that those
14 need to be heard on five business days' notice and four
15 business days' notice and that --

16 THE COURT: Well, remind me of the timing. The
17 SEC motion and the trust asset sales motion were filed
18 earlier.

19 MR. O'NEAL: Correct.

20 THE COURT: So I know the New York AG motion was
21 filed. It was the last one filed. And that came in, I
22 think, I don't know if it's in the evening. I don't
23 remember the exact time. But that's the last in time. So I
24 don't remember exactly. One's Docker 1220 --

25 MR. O'NEAL: Certainly. Your Honor, for --

1 MR. SAFERSTEIN: Both were filed with shortened
2 notice, Your Honor.

3 MR. O'NEAL: The GBTC sale motion, and I just
4 happened to know this, was filed on the 2nd, and initially
5 it was scheduled for a more expedited hearing. You asked
6 for us to push it out. We pushed it to the 14th. So that's
7 12 days' notice. That's the motion to sell or redeem the
8 GBTC. That's an important aspect to us because we're paying
9 \$1.7 million a month in management fees to Mr. Saferstein's
10 clients for keeping that GBTC with that particular
11 management structure.

12 So we would like to -- and certainly this is post-
13 ETF conversion. These are valuable assets, and we would
14 very much like to redeem those at the present. And it
15 sounds like Mr. Saferstein already has an objection teed up.
16 So it sounds like they've had sufficient time to address the
17 motion. And the SEC motion is simply an allowance of a \$21
18 million claim in respect of an enforcement action that was
19 filed by the SEC with respect to the Gemini lawsuit. Of
20 course Mr. Saferstein's clients are also defendants in that
21 action, I believe.

22 So I think, Your Honor, we would simply like to
23 get these things resolved and not take up time at
24 confirmation, particularly with respect to the GBTC sale
25 motion. Those are assets of the estate that we would like

1 to monetize immediately and not have to continue paying
2 management fees to the tune of \$1.7 million a month,
3 particularly where those management fees are larger than
4 other competing ETF.

5 MR. SAFERSTEIN: Your Honor, may I respond
6 briefly?

7 THE COURT: Yeah.

8 MR. SAFERSTEIN: Your Honor, you'll see in our
9 motion, we actually haven't had enough time to fully address
10 the motions. We've obviously been preparing. We had to
11 prepare our objection to confirmation. We've been preparing
12 for the hearing. From our view, this was clearly all filed
13 to overwhelm us, et cetera, while we were doing all that.
14 But putting that aside, these assets have been held by the
15 debtor for well over a year, and all of a sudden now it's an
16 emergency.

17 So I don't think there's an emergency need here.
18 We'd like it to be done in accordance with the rules on
19 proper notice. And again, we think it should be heard
20 either as part of confirmation or after confirmation.
21 There's no reason needs to be heard next week on five
22 business days' notice.

23 MR. O'NEAL: Your Honor, the ETF conversion just
24 occurred.

25 THE COURT: No, but this is the one that was filed

1 -- this is the one that was filed on February 2nd.

2 MR. O'NEAL: Yes.

3 THE COURT: So it's not five business days'
4 notice.

5 MR. SAFERSTEIN: Well, sorry. They sought to have
6 it heard yesterday.

7 THE COURT: It doesn't matter what they sought. I
8 didn't let them do that.

9 MR. O'NEAL: Right. That's correct.

10 THE COURT: So it's on for the 14th, and it was
11 filed on the 2nd.

12 MR. SAFERSTEIN: Well, we're five business --

13 THE COURT: We all know that there are degrees of
14 problems vis-à-vis notice, and so shortening notice is one
15 thing, the degree to which it's shortened is another. And
16 so this doesn't, frankly, seem to impact the issues for
17 confirmation.

18 So, Mr. Saferstein, my inclination is to split the
19 baby here since the SEC settlement, although I don't think
20 it's anywhere near the magnitude of the AG's settlement,
21 does seem to raise similar issues. Maybe that one goes at
22 confirmation because it's a similar in kind problem and
23 argument from your client's perspective. And so probably
24 there's some efficiencies to hearing those together, whereas
25 the other one, the trust asset sales motion, seems to be

1 distinct and to not raise those same kinds of problems.

2 MR. SAFERSTEIN: That's fine, Your Honor. Just to
3 clarify, I'm sorry, it was five days for our objection, so
4 sorry, I made --

5 THE COURT: No, that's fine. That's fine. So my
6 inclination is to hear the trust asset sales motion on the
7 14th as scheduled, to move the SEC motion to travel
8 connection with the New York AG motion because they raise
9 similar issues from the point of view of the DCG and its
10 objection and we don't want to repeat the same kind of
11 arguments in two separate hearings. And so with that, today
12 is the 9th. My thought is for people to work on discovery
13 next week. And if, Mr. Saferstein, it helps, then I'm
14 already hearing that there's some problems with the 23rd.
15 Maybe we just start this on the 26th, by your clients, two
16 weeks to do this, get their discovery and be in a position
17 to respond. We'll talk about a deadline for filing an
18 objection.

19 My sense would be, since today's the 9th, to file
20 your objection, have it due the 21st and then have the reply
21 due the 23rd. So if you'd have your objection due the 21st
22 at noon, reply due the 23rd at noon and then we could start
23 everything on the 26th, go the whole day until 5:00. I
24 confess I have something I need to be on, a call at 5:00.
25 But we can start at 9:00, 9:30, whatever time works for

1 folks. This avoids the problem of the 23rd. Then I will
2 ask Ms. Eubanks to work her magic and to get it so that we
3 can go ahead on the 27th and the 28th to go from starting at
4 11:00 and I can even make the morning of the 29th available.
5 I cannot make the afternoon available.

6 So if for some reason we don't get through that,
7 the full day of the 26th, the 27th starting at 11:00, the
8 28th starting at 11:00 and the morning of the 29th, then
9 we'll have to look for other dates. I can't do the 1st.
10 I'm supposed to be at the federal judicial center. So we
11 might have to pick another day the following week, maybe the
12 7th or 8th. But we'll cross that bridge when we come to it.
13 So that's what I would propose. It's very much an art of
14 splitting the baby on these things to try to keep everybody
15 equally unhappy. And so unless somebody wants to take a run
16 at that particular schedule that we've sort of inched
17 towards, that's what we'll do.

18 MR. O'NEAL: Your Honor, that sounds wise and
19 appropriate to us. We are good with that. Obviously, it's
20 what you would have us do. I think we do have a question in
21 terms of the confirmation, the confirmation hearing being
22 the 26th, and we're thinking then that we could move the
23 reply to a different date as well so that we have better --

24 THE COURT: Well, so let me talk to you about
25 that.

1 MR. O'NEAL: Yeah.

2 THE COURT: I think we've already had a discussion
3 about how some of the objections in reading them are clearly
4 a function of people not knowing what the debtor's position
5 is, issues about release, issues about exculpation, the
6 justification for the value that's going to be conveyed to
7 the unsecured creditors. And so I'm okay with moving it
8 from 10:00 on the 12th, but I think it needs to be filed
9 really soon because I think the more that the debtor's
10 position is out there --

11 MR. O'NEAL: Certainly.

12 THE COURT: -- the more it gives people a chance
13 to assess it and to figure out, if not resolutions of
14 issues, certainly the narrowing of the scope of issues. You
15 all are very good at that, but you can only do that when you
16 have the appropriate amount of information that you can make
17 assessments as to what you think you would do if you were
18 wearing the robe.

19 MR. O'NEAL: Certainly, Your Honor.

20 THE COURT: So my thought is, if the hearing is on
21 the 26th, what did you propose to move --

22 MR. O'NEAL: Yeah. I almost wanted to hear what
23 you were going to say first before I proposed it. But
24 perhaps I'll go first. We would suggest that the 16th,
25 which would be that Friday. So that would be ten days

1 before the hearing.

2 THE COURT: All right. So if I could push that
3 back a day to the 15th, because Fridays are days that I
4 don't have hearings, he says --

5 MR. O'NEAL: Certainly.

6 THE COURT: -- ignoring the current circumstance.

7 MR. O'NEAL: Yes, during a hearing, of course.

8 Yes.

9 THE COURT: But it's a day I'm more likely to have
10 large blocks of time to work on things. And again, I do
11 think that the additional time is helpful. There are -- I
12 mean, I took a look at some of the objections again before
13 coming out here, and there definitely are things that the
14 additional information would be helpful.

15 MR. O'NEAL: Certainly. Certainly.

16 THE COURT: So let's say the 15th by close,
17 whatever time you want, and then that way I can get up the
18 morning of the 16th all dewy eyed and enthusiastic to read
19 your pleading. So that would be all --

20 MR. O'NEAL: Certainly. On that score, I think
21 our --

22 THE COURT: And we should talk about the witness
23 schedules as well. I know that there was a back and forth
24 about witness, the declarations as well as motions in
25 limine, with some deadlines that were exceedingly tight that

1 would seem to make sense to adjust in light of the current
2 circumstance. So what would you propose for the schedule
3 for submitting witness -- the written direct for
4 declarations for witnesses?

5 MR. O'NEAL: Okay. Your Honor, just real briefly
6 in terms of the time then on the 15th, our close of business
7 is, I hope, later than yours. And so I would suggest that
8 we do that at 11:00 --

9 THE COURT: No, not really. So it's fine.

10 MR. O'NEAL: Okay. Well, I'm sorry to hear that.

11 THE COURT: I've filed (indiscernible) in my life.
12 I'm not trying to wreck anybody's evening, but whatever time
13 you want to file it on the 15th is fine.

14 MR. O'NEAL: Okay. That's what we'll do there,
15 and then I think when it comes to the witness list and these
16 mechanics, we are now out of the realm of my expertise, and
17 I'm going to turn it over to the appropriate person on our
18 team.

19 THE COURT: All right.

20 MS. VANLARE: Good afternoon, Your Honor. Jane
21 VanLare, Cleary Gottlieb Steen & Hamilton, on behalf of the
22 debtors. For the declarations, we would propose the same
23 day, the 15th. I think that's what we had been anticipating
24 doing under the current timeline, which is to file the fact
25 declarations in conjunction with the complication

1 (indiscernible) --

2 THE COURT: All right. So let me ask, I know that
3 CCAHG, it just rolls off the tongue, had communicated about
4 this as well. I'm assuming the 15th would work for you.

5 MS. GRIFFITH: Yes, Your Honor.

6 THE COURT: All right, and so for motions in
7 limine, what did you have in mind?

8 MS. GRIFFITH: Your Honor, your rules say five
9 days before, typically before trial. So we would propose
10 that we be able to file it five days before the rescheduled
11 day of February 26th.

12 THE COURT: So that would be the close of business
13 on the 21st. Would that work for you?

14 MS. GRIFFITH: Yes, Your Honor.

15 THE COURT: All right. All right, and we'll use
16 those deadlines for anyone else who's filing declarations or
17 would file motions in limine. I will say just in terms of
18 trying to figure out the sequence of events, motions in
19 limine, I tend to deal with them at the time I'm hearing
20 from the witness because they're often important to put in
21 context.

22 So I wouldn't anticipate spending time at the
23 front end of the hearing on it, just because the idea would
24 be to sort of put them in context with the witnesses. But
25 just to let you know what my practice is, I know judges

1 handle those things in many different ways. All right. So
2 we're talking about the 21st for that. I think we
3 communicated with CCAHG about the witnesses, saying that the
4 rule is if, all things being equal, witnesses will testify
5 in person, and that this is subject to all the same
6 exceptions that existed pre-COVID under the applicable
7 rules. And so I think we're having further discussions
8 about that, and we'll get back to you about that.

9 I understand no party objects -- if the court
10 thinks it's okay, then no party objects to your request to
11 have one of those witnesses by Zoom. The one thing I will
12 say is that if someone does participate as a witness by
13 Zoom, they need to be in an appropriate spot. I once had an
14 attorney use their phone as a hotspot for a trial during
15 COVID.

16 I am sure that this group of very fine lawyers
17 would not even think about doing something like that. But
18 obviously you want to make sure that there's no issues in
19 terms of people not having anything in front of them, no
20 computers, no nothing and all that good stuff. But to the
21 extent that exhibits are needed for the witness, that
22 somebody will be there to provide those to the witness. So
23 I'm assuming that that's how you're thinking about any
24 remote testimony, Counsel?

25 MS. GRIFFITH: Yes, Your Honor.

1 THE COURT: All right. All right, so with that --

2 MR. SHORE: A few more clarifications, Your Honor,
3 if I might?

4 THE COURT: Sure.

5 MR. SHORE: Again, Chris Shore from White & Case,
6 on behalf of the committee. First, the February 15th date
7 would also apply to briefs in support of confirmation, which
8 you can expect from the UCC and I think the ad hoc
9 committee.

10 THE COURT: Correct.

11 MR. SHORE: And then there is some debate going
12 back and forth between the teams as to whether or not those
13 briefs, and most importantly, the debtor's is subject to the
14 40-page limit or the 20-page limit?

15 THE COURT: No, I think they would be -- so I
16 realize that debtors are responding to a number of different
17 objections, and I think people have asked us for extensions
18 of time. Regrettably, we got those at different times,
19 which made it difficult for -- I'm trying to be fair to
20 everybody. So I think the first one that came in was asking
21 for another extra 20 pages over 40 pages. That seemed too
22 much. So I'm just trying to do it so that we don't drown in
23 paper. You all are very smart folks, and I think you can
24 say things. At a certain point, briefs become a bit
25 unwieldy in length. So I have no problem with 40 pages if

1 that's the brief that is being submitted by the party as
2 their statement.

3 I understand the debtors are responding to a
4 number of different briefs. I think it makes sense for the
5 debtors to have some additional time, given that they're
6 doing that. I think they had asked for between 70 and 100.
7 I'm not going to go to 100, but I'll go to 70, which seems
8 to be proportional to where everything is with everybody
9 else's submission. So what's to be submitted on the 15th is
10 subject to 40-page limit, except for the debtor's, who I'm
11 going to grant 70 pages. And again, I'm just trying to be
12 as fair as I can to folks. So Mr. Shore, anything else?
13 You said you had two questions. I wasn't sure if that --

14 MR. SHORE: No. Just the date and the page limit.

15 THE COURT: All right. So with that, let me ask
16 if there's anything else from any other party.

17 MR. SAFERSTEIN: Your Honor, Jeffrey Saferstein,
18 again, from Weil Gotshal, on behalf of DCG. Just one
19 clarification. By moving the SEC motion to the 26th, can we
20 use the 21st as the objection deadline for that one as well?

21 THE COURT: That seems appropriate to me. Any
22 objection to that?

23 MR. O'NEAL: No, Your Honor.

24 THE COURT: All right. Yeah. The 21st at noon is
25 fine.

1 MR. SAFERSTEIN: Thank you.

2 THE COURT: All right. Anything else from any
3 other party?

4 ANDREW WEAVER: Your Honor, Andrew Weaver, Cleary
5 Gottlieb, on behalf of the debtors. Since we're all
6 together and we've been talking hearing logistics, if we
7 could just ask for a couple of clarifications now that we've
8 moved the dates.

9 THE COURT: Sure.

10 MR. WEAVER: I think it'd be helpful. You'll be
11 happy to know that the parties have been working on joint
12 exhibits, and we're prepared to get you join exhibits for
13 next week. I think with this extra time, we'll be able to
14 hopefully iron out any issues. And obviously, there may be
15 additional exhibits in light of the additional items. But
16 it'll be helpful for us to know when you would like to
17 receive hard copies. The debtor's plan would be to submit,
18 at least as to confirmation issues, hard copies of all the
19 pleadings to you, and join exhibits, et cetera.

20 THE COURT: I'm open to your suggestion because
21 the exhibits aren't evidence until somebody introduces them.
22 I don't look at them in advance. I look at the written
23 directs. So the written directs are much more important to
24 get in advance. So if you want to send them up here on the
25 22nd, that would be fine. And also, just, since we're

1 talking about logistics and how things work, again, judges
2 are different ways about these things. My view, because
3 there's often very lengthy documents that people want to
4 introduce into evidence, is one is if it's not talked about
5 by somebody, it's not in, because the danger is for evidence
6 to be dumped on the court and that nobody really knows why
7 it's significant. And then magically, it becomes some sort
8 of an appeal point in a sort of trial by ambush problem.

9 So I will only introduce something, allow you to
10 introduce something, accept it as evidence, if it's
11 discussed by the parties. So it may be that people say,
12 well, Judge, we don't have a witness to talk about this, but
13 everybody agrees this is the agreement or this is the
14 document, and we just want to have the lawyer talk about it.
15 That's fine. But the point is that I know why you're
16 introducing it, and the related point is that I will
17 consider what you identify as relevant in the document.

18 So, as you all know, we sometimes get very lengthy
19 documents, 80 pages, and people highlight a few pages, and I
20 will look at what you identify for me. And so I do not go
21 independently searching for what I think is, to quote "My
22 Cousin Vinny," the case cracker. You don't want me doing
23 that. That's not how the system is supposed to work. It
24 leads to surprises. Surprises are not supposed to be part
25 of the system that way. So I will look at what you identify

1 for me as their relevant portions. Obviously, other
2 interested parties can come up and point me to other things.
3 But again, if you don't cite to it or identify it as
4 something for me to look at and consider, I won't consider
5 it, because, again, it's not the way the adversary system is
6 supposed to work. So, Mr. Weaver, other questions you might
7 have?

8 MR. WEAVER: That's very helpful, Your Honor. And
9 just to clarify, my sense is that parties will, in an
10 abundance of caution, want to have exhibits available that
11 may or may not be referred to during the hearings. Would
12 your practice be at the end of, even after the end of
13 argument, to then admit documents into evidence?

14 THE COURT: I'm happy to do it as we go, in terms
15 of figuring out what should be the evidentiary record,
16 because you have a witness talking about it, or it's fresh
17 in everybody's mind, and we can sort of have a sum up at the
18 end just to make sure we're all on the same page. All trial
19 lawyers have all these habits of doing these things that
20 way.

21 So we'll make sure that we're all on the same
22 page. But my point is just that I want to know why you're
23 introducing it. And obviously, I understand that you may
24 introduce the whole document because it's the whole
25 document. That's fine. It's just that what I tend to do is

1 mark it up as you identify what you're talking about. And
2 then when I go back, if I need to go back, that's what I
3 look at.

4 MR. WEAVER: Okay. Understood, Your Honor. Thank
5 you. And I think we just want to make sure we're all
6 confirmed on the dates that the remaining declarations in
7 lieu of direct will be on the 15th, and the motions in
8 limine date is the 21st. We just want to make sure we had
9 that correct.

10 THE COURT: That's what I have as well.

11 MR. WEAVER: Okay. Thank you, Your Honor.

12 THE COURT: All right. All right. Any other
13 questions? These are all useful. Again, I'm not trying to
14 surprise anybody at how we'll conduct the hearing, so I'm
15 always happy to entertain any of these kinds of questions.
16 All right. So what I think, in the interest of making sure
17 we're all on the same page, transparency for the people who
18 follow a case like this, is to put together an order that
19 memorializes the new schedule. And I don't think the trial
20 points need to be in there, but just the deadlines and
21 things of that sort. And if there's other things that, in
22 consultation with -- as the parties are consulting with each
23 other that you think are worthy of including in there, in
24 the interest of having just clarity, I'm happy to have you
25 included as well. And so also, what are the records for the

1 deadlines are the deadlines and we know what we're doing.

2 But again, I'm happy to chat with parties about things like
3 this so that we can all do this efficiently.

4 So, one question. I'm not sure if this is to Ms.
5 VanLare or Mr. Weaver, is I think we talked about potential
6 issues with the 23rd with counsel and/or the witnesses. It
7 sounds like I didn't hear the same for the 26th. So I would
8 think we would default back to our intended idea of putting
9 on very short openings and then going right to the witnesses
10 and trying to get those done on the 26th until we're
11 finished. Does that make sense? I mean, I understand you
12 need to talk to witnesses because they haven't heard any of
13 these dates. But, assuming that works, is that the
14 intention?

15 MS. VANLARE: That is our intention, yes, Your
16 Honor, subject to, as you said, just our confirmation that
17 the witnesses are available. But that's what we would like
18 to do.

19 THE COURT: All right. All right. With that, any
20 other questions, comments, concerns to be raised by any
21 party?

22 MR. O'NEAL: Your Honor, just thank you for
23 setting up this status conference. Having started the
24 process of herding the cats this morning, actually this
25 status conference was much more efficient. So we greatly

1 appreciate your taking the time and sorry to interrupt your
2 afternoon.

3 THE COURT: No, no. It's fine. That's what I'm
4 here for. I realize that there's a lot of interested
5 parties here. And I don't lightly drag you all on short
6 notice away from whatever else you're doing. But at a
7 certain point, the lack of clarity becomes very inefficient
8 and puts you all in a difficult spot of not knowing what the
9 process looks like. So I'm always happy to have those
10 conversations. And that's part of the job. So, with that,
11 I bid you all a good rest of your Friday and weekend. And
12 look forward to seeing the information start to come in.
13 And thank you all.

14 MR. O'NEAL: Thank you.

15 MR. SAFERSTEIN: Thank you, Honor.

16 (Whereupon these proceedings were concluded.)
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 14, 2024